

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MACK TURNAGE,

Plaintiff,

vs.

UNKNOWN,

Defendant.

**1:22-cv-00183-GSA-PC**

**ORDER FOR CLERK TO RANDOMLY  
ASSIGN A UNITED STATES DISTRICT  
JUDGE TO THIS CASE**

**AND**

**FINDINGS AND RECOMMENDATIONS  
TO DISMISS CASE FOR FAILURE TO  
OBEY COURT ORDER  
(ECF No. 13.)**

**OBJECTIONS, IF ANY, DUE IN  
FOURTEEN (14) DAYS**

Mack Turnage ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action under 42 U.S.C. § 1983.

On April 20, 2022, the Court issued an order requiring Plaintiff to file a First Amended Complaint on the Court's form, and to do so within thirty days. (ECF No. 13.) The thirty-day time period has expired and Plaintiff has not filed a First Amended Complaint or otherwise

1 responded to the Court's order. Therefore, it will be recommended that this case be dismissed  
2 for Plaintiff's failure to comply with the Court's order. The Clerk shall be directed to randomly  
3 assign a United States District Judge to this action.

4 In determining whether to dismiss this action for failure to comply with the directives set  
5 forth in its order, "the Court must weigh the following factors: (1) the public's interest in  
6 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of  
7 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the  
8 public policy favoring disposition of cases on their merits." Pagtalunan v. Galaza, 291 F.3d 639,  
9 642 (9th Cir. 2002) (citing Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)).

10 "The public's interest in expeditious resolution of litigation always favors dismissal,"  
11 id. (quoting Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)), and here, the  
12 action has been pending since February 2, 2022. Plaintiff's failure to respond to the Court's order  
13 may reflect Plaintiff's disinterest in prosecuting this case. In such an instance, the Court cannot  
14 continue to expend its scarce resources assisting a litigant who will not comply with the Court's  
15 orders. Thus, both the first and second factors weigh in favor of dismissal.

16 Turning to the risk of prejudice, "pendency of a lawsuit is not sufficiently prejudicial in  
17 and of itself to warrant dismissal." Id. (citing Yourish at 991). However, "delay inherently  
18 increases the risk that witnesses' memories will fade and evidence will become stale," id., and it  
19 is Plaintiff's failure to file his complaint on the Court's form that is causing delay. Therefore,  
20 the third factor weighs in favor of dismissal.

21 As for the availability of lesser sanctions, at this stage in the proceedings there is little  
22 available to the Court which would constitute a satisfactory lesser sanction while protecting the  
23 Court from further unnecessary expenditure of its scarce resources. Monetary sanctions in this  
24 circumstance are of little use, and given the early stage of these proceedings, the preclusion of  
25 evidence or witnesses is not available. However, inasmuch as the dismissal being considered in  
26 this case is without prejudice, the Court is stopping short of issuing the harshest possible sanction  
27 of dismissal with prejudice.

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1 Finally, because public policy favors disposition on the merits, this factor will always  
2 weigh against dismissal. Id. at 643.

3 Accordingly, **IT IS HEREBY ORDERED** that:

4 1. The Clerk of Court shall randomly assign a United States District Judge to this  
5 action;

6 **AND**

7 2. The Court **HEREBY RECOMMENDS** that:

8 (1) This action be dismissed, without prejudice, based on Plaintiff's failure to  
9 obey the Court's order issued on April 20, 2022; and

10 (2) The Clerk be directed to close this case.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**  
13 **(14) days** after the date of service of these findings and recommendations, Plaintiff may file  
14 written objections with the court. Such a document should be captioned "Objections to  
15 Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
16 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
17 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
18 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: **June 16, 2022**

**/s/ Gary S. Austin**  
UNITED STATES MAGISTRATE JUDGE